

## MINUTES

### WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting held in Commissioners Meeting Room,  
Third Floor, Historic Court House,  
Boonville, IN

Monday, September 10, 2012, 6:00 PM

**PLEDGE OF ALLEGIANCE** – A moment of silence was held in honor of Larry Willis followed by the Pledge of Allegiance.

**MEMBERS PRESENT:** Guy Gentry, President; Amanda Mosiman, Mike Moesner, Brad Overton, Jeff Valiant and Marlin Weisheit.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director and Sheila Lacer, Staff.

**MEMBERS ABSENT:** None

Roll call was taken and a quorum declared present.

**MINUTES:** Upon a motion made by Mike Moesner and seconded by Jeff Valiant, the Minutes of the last regular meeting held August 13, 2012, were approved as circulated.

The President explained the Rules of Procedure to the audience and stated that any rezoning petition will be forwarded to the County Commissioners at their meeting to be held on Monday, October 8, 2012, at 4:00 p.m. in the Commissioners Meeting Room, Courthouse, Boonville, Indiana.

**PC-R-12-13 – Petition of Gotham Recovery, LLC, Donald G. Adams, Mbr. OWNER: Donald G. Adams** to rezone 0.41 acres located on the N side of Jenner Rd. approximately 723' W of the intersection formed by Jenner Rd & Fuquay Rd. Ohio Twp. from "A" Agriculture to "C-3" Highway Commercial with a Use and Development Commitment. *(Complete legal on file.)* Advertisied in the Boonville Standard August 30, 2012.

Don Adams was present.

The President called for a staff report.

Mrs. Rector said they do have all of the return receipts from certified mail of notice of this meeting to the adjacent property owners. She said this application is to rezone 0.41 acres from "A" to "C-3" Highway Commercial with a Use and Development Commitment. She said the Use and Development Commitment limits the use of the real estate to the operation of Gotham Recovery, store 2 wreckers on said property, and storage of up to 12 vehicles on said property. She said the cars are to be stored at the rear of the property near the barn. She added the rezoning area takes in the unattached accessory building and driveway; Mr. Adams owns 2.5 acres and is proposing to rezone 0.41 acres. She said there is no minimum lot area required for commercial zoning and the Comprehensive Plan projects the area to be moderate to high density residential. She said the property currently has Mr. Adam's residence and unattached accessory building. She said all surrounding property is zoned Agriculture with residences. Mrs. Rector said there was a complaint filed against Mr. Adams on June 5, 2012 saying he was operating a car recovery business out of his residence. She said he appeared before the Plan Commission on July 9,

2012 and he was informed he needed to file for a rezoning in order to bring his property into compliance. She said of course if the final action by the County Commissioners is to deny the rezoning then he will have to remove the two wreckers from his property and the cars being stored there. She added there is no flood plain on the property and there is an existing driveway on Jenner Road and the County Engineer wants the driveway upgraded to commercial standards if this rezoning is approved due to the size of the wreckers and pulling the vehicles in and out on a County road. She said the stated use is a towing company and when he was before the Board about the violation it was determined that it would require the "C-3" Commercial zoning. She added the application is in order.

Mr. Adams had nothing to add.

The President called for questions from the Board.

Amanda Mosiman asked how soon the driveway would need to be upgraded.

Mrs. Rector said as soon as it has been rezoned. She said he would need to file the commercial driveway and it would need to be designed by an engineer on what it would take to upgrade it and then Mr. Adams would have to post a letter of credit or cashier's check to cover the cost of construction.

Ascertaining there were no further questions from the Board, the President called for remonstrators.

Mike Rust, 7399 Jenner Road, said he lives directly across from Mr. Adams. He submitted a prepared statement to the Board. *(Copy on file.)* He read the statement. *I am attending the meeting this evening in regards to a rezoning request by my neighbor, Mr. Don Adams, to rezone 0.41 acres from "A" Agriculture to "C-3" highway commercial zoning district with a use and development commitment. I received the notice of this public hearing along with a letter of explanation from Mr. Adams. In the letter he stated that we may or may not know that he was running a repossession company out of his residence across the street from our house. He also went on to state that a couple of months ago he had an unfortunate backlog of vehicles and therefore many were stored in front of his house in view of the whole neighborhood. He apologized for the eyesore but went on to state that one of his neighbors took great offense of the cars parked in front and consequently lodged a formal complaint with Warrick County.*

*I am the neighbor that took great offense to Mr. Adams parking repossessed vehicles in front of his house for an extended period of time from late 2011 until it was brought to the attention of the Area Plan Commission in June. I am also here this evening to speak out against the rezoning request presented by Mr. Adams. My reasons for opposing the rezoning request are:*

- 1. I live in a quiet country residential setting in which properties have some space but are still in close proximity to one another and easily visible to individuals living in the area. A repossession company is not a good fit.*
- 2. A look at the area would show that all properties are well maintained and prove to be appealing to all current residents. The same should be the case for future residents as well. Again, how does a repossession company fit?*
- 3. To rezone a piece of property in the middle of a quiet country neighborhood setting to C-3 highway commercial zoning district with a use and development commitment would be at the*

*expense of neighboring properties. It would not only affect the tranquility of the area but have an adverse effect on neighboring property values or futures resale values.*

- 4. When individuals have the misfortune of having their vehicle repossessed it does not make for a good situation. A repossession business in the middle of a residential area is not a good mix and is inviting trouble at some point in time.*
- 5. Areas in Warrick County are zoned certain ways for a reason. Residential areas are just that, residential areas. Likewise, commercial areas are zoned for commercial use without hindering residential areas.*
- 6. Any and all business at Mr. Adams residence is noticeable. Whether it is a tow truck bringing vehicles to the property or a transport truck removing vehicles from the residence, the end result is not what a residential area should be experiencing.*

*Article V of the Rezoning Instructions for the Warrick County Area Plan Commission state that after the hearing, the board shall make its determination for approval, denial, or modification of the special use classification based on the following criteria:*

- 1. Whether the specific site is appropriate location for the uses;*
- 2. Whether the use as developed will adversely affect the surrounding area*
- 3. Whether there will be a nuisance or serious hazard to vehicles, pedestrians, or residents;*
- 4. Whether adequate and appropriate facilities will be provided for proper operation of the uses;*
- 5. Whether the use is in harmony with the Warrick County Comprehensive Plan;*
- 6. Whether the use is essential or desirable to the public convenience and welfare.*

*In looking at the established criteria, I am of the opinion that the criteria has not been met to grant the rezoning for by Mr. Adams. It is my request to keep the area residential and not open the door to the mix of residential and commercial use for this area.*

Mr. Rich thanked the Board for their time.

Joyce Mattingly said she lives on Fuquay Road right around the corner from Mr. Adams. She said it is an eyesore and when she goes walking she has counted up to seventeen vehicles in the front yard. She said she doesn't approve of this rezoning.

Leslie Mattingly 7300 Jenner Road, said she is two lots down from this property. She said they have noticed at times there are 15-17 cars up front parked in the circle in front of the house. She said she isn't sure what was behind there but she can see the front yard very easily as she drives by. She said they have had many people stop by their house and ask what is going on there. She said that is not what you would expect to see in this neighborhood. Ms. Mattingly said people from other neighborhoods also stop by and they don't understand it because it just looks out of place in the area. She said she is also against the rezoning. She said with all the cars up front there are other problems that could come up like burglaries

and just people knowing those cars are there. She said that could make it less safe for those in the neighborhood.

Ascertaining there were no other remonstrators the President called for rebuttal.

Mr. Adams said they have never had any issue with safety there at all. He said they don't have any customer contact at his place of residence.

Guy Gentry asked if he also had a business property in Evansville too. He said at one point before he started with this rezoning they discussed whether this could be a home workshop or something of that nature this was just going to be like an overnight type of thing.

Mr. Adams said most of the cars usually don't sit there more than two or three days. He said they do store cars on their lot in Evansville too. He said the only reason the cars show up at his house is because of the logistics of where he is coming from and if it late and they will sit there for a couple of days and it moves on to other storage or it goes on to the auction. He said they don't have any customer contact; no one ever comes to his house. He said basically all he wants to do is park his tow trucks in his barn where they are little more save and secure than his place in Evansville.

Guy Gentry asked if he had a garage at the place in Evansville.

Mr. Adams said it is a fenced in lot.

Mike Moesner asked about the time he had so many cars at his house; was that an unusual situation.

Mr. Adams said it was an unusual situation in that a client of his had an employee who was ill and they were not sending them out to the shipper fast enough. He said that has all been resolved and he has a backup plan. He said there have not been any cars up front since then and the ones in the back you can't see from the road.

Guy Gentry said so the ten vehicles he wants to have ...

Mr. Adams said he would like to keep up to twelve and they will all be in the back.

Mrs. Rector said at the one meeting he said he also liked to "tinker" with cars and she wanted to know if that is included in the twelve cars or are they additional.

Mr. Adams said he would have one car to work on and then he has two cars himself; an amount of fifteen cars and two wreckers.

Mike Moesner asked if there was a particular reason why he parked them in the front instead of the back to which Mr. Adams said the back was full at the time.

Jeff Valiant asked Mr. Adams how long he has lived at this property.

Mr. Adams said he has lived there nine years.

Jeff Valiant asked how long he has been running this business and had the trucks at his house.

Mr. Adams said since 2006.

Mike Rust said early on he was oblivious to what was taking place and Mr. Adams has been a good neighbor but his objection is to the vehicles that are stored there as well as the tow trucks that are in and out of a residential area along with the transport trucks that take the vehicles away from the property. He said that is the biggest part of his objection. He said on a regular basis they have vehicles towed into the property and at some point a transport truck pulls in to take the vehicles away. He said this is a quiet country setting and it is a very pleasant neighborhood and he has some concerns that if they rezone it to commercial it will spoil the setting.

Mike Moesner asked how many vehicles the transport trucks haul at one time.

Mr. Adams said back in the spring sometimes they picked up four at one time but since then there hasn't been a transport vehicle there. He said they have been delivering everything to the auction. He said the company that they worked for shipped them out to other auctions and that is why they had to be transported. He said now they are on board with the local auction he picks up the car and delivers it to the auction.

Guy Gentry asked if that is Wolfs to which Mr. Adams said yes.

Mr. Adams said there hasn't been a transport vehicle there since May or June.

Marlin Weisheit asked if the transport trucks are like the wreckers; they are just one ton trucks; they are not very large.

Mr. Adams said the largest one is a Ford F450 with a single wheel well. He said it is not a dual axle; nothing huge.

Mike Moesner said that is his question as to whether he had trucks with trailers having to pull in there and turn around.

Mr. Adams said at one time there was a company that picked up once or twice there that had a trailer that parked on the road for about fifteen to twenty minutes to pick up four or five cars but that was last fall.

Guy Gentry said he still has a problem – he is storing up to twelve vehicles at a time. He asked if he is collecting them there for the auction or what.

Mr. Adams said when he picks them up he usually brings them there and he will do all the paper work and turns all his stuff in and then within 2-3 days he takes the car to the auction. He said there are also some that stores longer because some he won't take to the auction they come and pick them up themselves and he stores them in Evansville.

Morrie Doll said he needs to advise the members of the Board that from the drawing it appears that this will be a single zoning within a surrounding Agricultural zoned district. He said it would be his legal opinion that would be in fact spot zoning. He said he needs to advise them that the Indiana Court of Appeals as well as the United Supreme Court have significantly opposed appellate cases that have come to them in which spot zoning has been conducted because they find no grounds for it to be supported by

the County's master zoning plan. He said it would be his advice that if the Board would approve this and someone would challenge it would probably be overturned by the courts.

Ascertaining there were no other comments from the Board, the President called for a motion.

Mike Moesner said in order to put this on the table he would make a motion based on the evidence presented and petition on file to recommend approval to the County Commissioners of PC-R-12-13. The motion was seconded by Marlin Weisheit. No Board members voted for the motion. Marlin Weisheit abstained and all others voted against the motion.

The President stated this will be forwarded to the County Commissioners on October 8, 2012 with a recommendation of denial. He said the Commissioners have the final say on the rezoning.

#### **SUBDIVISION FOR PRIMARY PLAT APPROVAL:**

**PP-12-06 – Orchard View PUD Sec 1B by Allan R. Holweger** 7.03 acres located on the E side of Taylor Dr. 0' SE of the intersection formed by Ande Dr. & Taylor Dr., Ohio Twp. Orchard View PUD 1A and pt Orchard View PUD 1. *(Complete legal on file.) Advertised in the Boonville Standard August 30, 2012.*

Jim Biggerstaff and John Mattingly were present.

The President called for a staff report.

Mrs. Rector stated they still need either green card or unopened envelopes from Stacy Williams and David & Mary Lou Matzen. She said the zoning on this property is PUD/C-4 and there is no flood plain. She said the Commissioners approved no improvements for Vann Road, Ande Drive or Taylor Drive and the Drainage Board ruled that no additional drainage plans would be required from the previously approved plans. She said Newburgh has sewer lines in place and available and Chandler has water lines in place and available. She said the only thing they are doing on this plat is adding building seven. She said in a PUD you have to show the locations of all the buildings and this one was not shown and it has been reconfigured from earlier.

Ascertaining there were no questions from the Board and being no remonstrators present the President called for a motion.

Marlin Weisheit made a motion to approve PP-12-06. The motion was seconded by Mike Moesner and unanimously carried.

#### **OTHER BUSINESS:**

**Formal Complaint** ~ Frank Schnell dba FIT Tire Recycling, OWNER OF RECORD: J.H. Service Co., Inc., by Ronald Witt, Sr., Pres. ~ Tire storage ~ Progress Report.

Mr. and Mrs. Frank Schnell and Isaiah Schnell were present.

Mrs. Rector said they have been before the Board over several months. She said they are supposed to come before the Board this evening with a progress report and they were asked to show the Board how

Page 6 of 10

many tires they have taken in and show how many tires they have taken out. She said they were also let the Board know if the shredder had been delivered. She said the Zoning Inspector went to the property on Friday and reports there are still a lot of tires on the site and he didn't see much of a difference from the last visit. She said Isaiah has presented the Board with some paperwork but she hasn't looked at it. She said she spoke with Attorney Doll this morning and she is leaving any recommendations to be made with him.

Isaiah Schnell said they brought in 900 tires and the reason they are on the dock is because it is easier to work the tires. He said they have removed about 47 tons of tires. He said each tires weighs about 20 pounds and so they have taken out about 4700. He said they have got a contract to haul some coal so that will generate some more money to pay the dump. He said they hired a full time employee as well. He said they had to take a two day trip up to La Porte and picked up the machine. He said it is sitting on the dock right now and they have to get a programmer and an electrician to hook it up.

Guy Gentry asked when it would be working.

Isaiah Schnell said they have to get a programmer and an electrician scheduled.

Guy Gentry said he likes what he presented showing what has gone out but he says they brought in 900 tires; is there a record to show how many actually does come in and can they get that next time.

Isaiah Schnell said he didn't think they...he thought they said tell them what they brought in and show them what they took out. He apologized.

Marlin Weisheit said so they finally got the machine on their property and it will be great to get it going.

Mike Moesner said he thinks they are doing a good job and keep up the good work.

Isaiah Schnell asked when they want him to come back.

Mrs. Rector said they need to make a determination on how many months they want this on the agenda and when do they want him to reach the point of 1,000 tires on the property.

Guy Gentry said so IDEM gave them nine months so that will be May or June.

Isaiah Schnell said he would like to tell them he will have it done in one month but he won't. He said as long as his Mom keeps her health they will keep working. He said Christmas will be here in couple of months and he doesn't want to be out there cutting up tires then.

Guy Gentry asked if Attorney Doll had any suggestions. He said he would hate to see them have to come in every month but he doesn't want to go the full length to that deadline the State gave them.

Attorney Doll said if they could tell them what the Board's wishes are; do they want it to be over now, do they want it have a specific time...

Mike Moesner said what about if they would submit a report to the office each month showing tires out and tires in.

Frank Schnell said he can write down the tires in but he usually has an automated statement and sometimes those statements will only have twenty tires and that will take a lot of copying.

Mike Moesner said the main thing is so they can see they are making progress as far as getting the tires out.

Guy Gentry said he would obviously like for this to be over with but as Isaiah has said this isn't a quick fix and they all know that. He said he doesn't think legally they can go beyond what the State is going to do and he is kind of holding off for the deadline and hoping they get it taken care of. He said he is willing to work with them as long as there is continued progress towards that but he doesn't know if they need them to be here each month. He said maybe a couple of times before the time is up.

Brad Overton said he thinks December looks like a good time for them to come back. He said then they could get a progress report and things are probably going to slow down with the weather.

Isaiah Schnell said as they go into winter they do get a big rush with people changing over to snow tires and after that it dies off for a couple of months.

Brad Overton said he doesn't want to see every single invoice but if they could just log the numbers onto an Excel spreadsheet, say 100 tires from so and so and give them a total number of how many in by the end of September and then maybe by December they could show how many brought in and taken out. He said that would look good for him.

Marlin Weisheit said that works for him.

Guy Gentry said then they would only have four months after that to finish and so they need to have a pretty good dent in it.

Isaiah Schnell said working these tires are brutal and he wants to get them cut up sooner than later.

Morrie Doll asked what the capacity of the new machine is.

Frank Schnell said they claim it will do a semi load a week but they all know that things sometimes don't do what they say, but it is quite a bit bigger than what they have.

Brad Overton asked how many tires are in a semi load.

Isaiah Schnell said the average tire is 20 pounds and there about 100 tires per ton and so that is about 1400 tires. He said the machine is going to do a lot better than the little one they have now.

Guy Gentry said so the recommendation is for them to come back in December.

Mrs. Rector asked what they want him to turn in to the office and when.

Brad Overton said a monthly report.

Mike Moesner said it can be on a spreadsheet and sent to the office.



Isaiah Schnell said he can email them a report. He said he can send them a report on the Friday before the Monday meeting. He said he will start a new email thread for the reports.

**ATTORNEY BUSINESS:**

None.

**EXECUTIVE DIRECTOR BUSINESS:**

Mrs. Rector said she wants the Board to be aware that a rezoning has been filed that is located about 1,000 feet south of the intersection of Vann Road and Bell Road. She reminded them that this property had a rezoning petition filed earlier in the year for apartments and there were loads of remonstrators. She said this is about 14 acres and Mr. Ciholas is filing this petition. She said he is the one who was going to purchase a lot in the subdivision of Grimm Road and SR 66 and that deal evidently fell through. She said she wanted them to be aware this was coming and to think about what type business he has and if this fits in to that area. She said they are asking for a “C-4” zoning and their Use and Development Commitment only eliminates a handful of uses and she wants them to know it is coming.

She said there is another rezoning in the works to petition to rezone all of the property beside and behind Peoples Bank in Newburgh to a PUD zoning for apartments. She said this is an existing subdivision and she has already received emails against this and so she knows there will be a lot of remonstrance against that. She said she suggested to the parties involved they should meet with the adjacent property owners prior to coming to the Board and try to put their minds to ease over some of the issues. She said she got a phone call and an email that they are going to try to do that and so that rezoning won’t be before them until November. She said one thing they need to remember about the apartment zoning is they want to do a PUD so they don’t have individual lots and they want to reconfigure the streets and make them private. She said right now they could come in and build an apartment building on every lot there and the permits would be issued. She said there isn’t anything saying apartments can’t go there; it will just be doing a PUD and approving the layout. She said really, basically they are not approving apartments because they can put apartments there now.

Attorney Doll said it is not a change of use it is a change of how to use it. He said apartments would be permitted now.

Mrs. Rector said she thinks with things like this they should go look at the property and look at the area around it. She said people are worried about the traffic on Oak Grove Road and the subdivision has an entrance on the State Highway. She said the County Engineer would probably have to request a traffic study. She added this is right by the middle school.

She said Marco DeLucio is representing Mr. Ciholas and Les Shively is representing (Kendall) the apartments. She again stated the two petitions will be heard at different meetings.

Attorney Doll said when Mr. Ciholas was here previously for the other location and there were several remonstrators and when this property was before the Board for the apartments it had even more remonstrators and putting the two together, he is wondering if there will be a standing room only crowd.

Mrs. Rector said the one thing that will help is this is 1,000 south of Vann Road so it isn't right across the street from the one subdivision. She said it is touching the one to the east and so there will be remonstrators. She said there is one house between this property and the Acapulco Restaurant. She said she questioned why they were rezoning so much property and she was told for future expansion. She said he is only purchasing a portion of the property and rezoning.

\*\*

The President commented there is a vacancy on the Board and if any of the members have a suggestion they can let the Commissioners know.

Marlin Weisheit said Mr. Willis's shoes will be hard to fill.

Mrs. Rector said whoever the Commissioners appoint to the Plan Commission, they will have to come to the Plan Commission meeting and be appointed to the Board of Zoning Appeals by the Plan Commission. She commented Larry Willis was Chairman of the BZA and they will need to elect a new Chairman at their next meeting, however, there will not be a September meeting because nothing has been filed.

Discussion ensued over possible members and eligibility. It was also discussed the current term ends at the end of this year.

Being no other business the meeting adjourned 6:50 p.m.

---

Guy Gentry, President

ATTEST:

---

Sherri Rector, Executive Director